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Tentative Rulings

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DEPARTMENT 61 LAW AND MOTION RULINGS

Case Number: 23STCV14890 **Hearing Date:** July 1, 2024 **Dept:** 61

STEWART LUCAS MURREY vs KELLY GIBBONS, et al.

TENTATIVE

Defendant Kelly Gibbons' Special Motion to Strike (Anti-SLAPP) the First Amended Complaint is GRANTED as to the third, fourth, and sixth through eleventh causes of action, and DENIED as to the first, second, and fifth causes of action for defamation and false light.

Defendant to provide notice.

DISCUSSION

SPECIAL MOTIONS TO STRIKE

In 1992 the Legislature enacted Code of Civil Procedure section 425.16 as a remedy for the "disturbing increase in lawsuits brought primarily to chill the valid exercise of the constitutional rights of freedom of speech and petition for the redress of grievances." (Code Civ. Proc., §425.16, subd. (a); Wilcox v. Superior Court (1994) 27 Cal.App.4th 809, 817.) The lawsuits are commonly referred to as "SLAPP" lawsuits, an acronym for "strategic lawsuit against public participation." (Equilon Enterprises, LLC v. Consumer Cause, Inc. (2002) 29 Cal.4th 53, 57, fn. 1.) A defendant opposing a SLAPP claim may bring an "anti-SLAPP" special motion to strike any cause of action "arising from any act of that person in furtherance of the person's right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue" (Code Civ. Proc., § 425.16, subd. (b)(1).) An anti-SLAPP motion may be addressed to individual causes of action and need not be directed to the complaint as a whole. (Shekhter v. Financial Indemnity Co. (2001) 89 Cal.app.4th 141, 150.)

In ruling on an anti-SLAPP motion, a trial court uses a "summary-judgment-like procedure at any early stage of the litigation." (Varian Medical Systems, Inc. v. Delfino (2005) 35 Cal.4th 180, 192.) This is a two-step process. First, the defendants must show that the acts of which the plaintiff complains were taken "in furtherance of the [defendant]'s right of petition or free speech under the United States of California Constitution in connection with a public issue." (Code Civ. Proc., §425.16 subd. (b)(1).) Next, if the defendant carries that burden, the burden shift to the plaintiff to demonstrate a probability of prevailing on the claim. (Code Civ. Proc., § 425.16 subd. (b)(3).)

In making both determinations the trial court considers "the pleadings, and supporting and opposing affidavits stating the facts upon which the liability or defense is based." (Code Civ. Proc., § 425.16, subd. (b)(2); Equilon Enterprises, supra, 29 Cal.4th at p. 67.)

A. PROTECTED ACTIVITY

The anti-SLAPP statute defines protected activities as:

(1) any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law, (2) any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law, (3) any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest, or (4) any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest.

(Code Civ. Proc., § 425.16, subd. (e), emphasis added.)

Defendant Kelly Gibbons (Defendant) argues that the claims against her alleged in Plaintiff Stewart Lucas Murrey's First Amended Complaint (FAC) arise from protected activity, namely "written or oral statement[s] or writing[s] made in a place open to the public or a public forum in connection with an issue of public interest," as well as "any other conduct in furtherance of the exercise of the constitutional right of free speech in connection with a public issue or an issue of public interest." (Motion at pp. 9–10.) Defendant bases this contention on the nature of the conduct alleged against her, which consists of posts made in a Facebook group called "Are We Dating the Same Guy – Los Angeles," evidently a Facebook group in which users post or inquire with other users about men they have dated or are looking into dating. (Ibid.; FAC ¶ 4.)

Plaintiff alleges the following misconduct collectively against Burger and other defendants:

Defendants wrote, published, and circulated defamatory statements about plaintiff to millions of users on Facebook . . . that include the following states: "Public records show" [that plaintiff has] involvement in [a] MURDER case of his ex-wife," is "suspected of murder"; [h]as several domestic violence charges filed against him"; has "filed court cases against women trying to extort money from them"; "[h]as acted aggressively in court"; "has STDs"; has an "ex-wife who was killed"; deserves to be "ARRESTED"; "claim[s] he is an attorney"; and that plaintiff is listed on the California court's public record as being a vexatious litigant."

(FAC ¶ 8.)

It is unclear from the pleading which of the above statements Plaintiff attributes to which defendant. In opposition to the present motions, Plaintiff presents the following statements made by Defendant Gibbons on the Facebook group in question, in reference to Plaintiff:

In a thread of comments discussing Plaintiff, Defendant states: "[H]e also goes by Stewart, which according to all these lawsuits is his legal first name." (Murrey Decl. Exh. C.)

Elsewhere, in the same or a different thread, another commenter asked, "What was the ex wife's name?" evidently referring to the ex-wife of Plaintiff. (Murrey Decl. Exh. C.) Defendant responded, "I have looked over the court docs and from what I gather, her name was Sherrie M." (Ibid.)

Plaintiff identifies another post in which Defendant states that she has tried reporting Plaintiff to Hinge, and asks whether anybody who uses the dating service Bumble would be able to report Plaintiff on that platform. (Murrey Decl. Exh. C.) Gibbons elsewhere posted, "[H]is name is Stewart Lucas so that explains the "ST" but he probably has realized he is getting reported left and right so he's coming up with new ways to ID. I'm surprised he hasn't started using fake names considering his entire legal dumpsterfire is public record." (Murrey Decl. Exh. C.)

Elsewhere, Defendant states of Plaintiff: "[H]e pressed lawsuits against a number of women to extort money from them and was suspected in the murder of his ex wife. I think the doc could investigate the murder since he clearly didn't go to jail about it and instead of accuse him just plant seeds of suspicion." (Murrey Decl. Exh. D.) In another statement, Defendant said, "[T]his was at the end of the email lol so I guess all his extortion lawsuits [emoji] they're gliding right on past that murder suspicion." (Murrey Decl. Exh. E.) Defendant elsewhere stated that Plaintiff was "either extorting or trying to extort money from multiple different sources." (Ibid.)

In another post, Defendant stated: "[O]mg ... suing a company that catches cheaters and the suspicion of murdering his wife?! Dateline vibes." (Murrey Decl. Exh. E.)

In another post, Defendant posed an “UPDATE” that Plaintiff had been reported and removed from the Hinge dating platform, “But he is obviously a predator so keep in mind he could make new profile with new names or false info.” (Murrey Decl. Exh. E.)

Plaintiff also identifies several posts in which Defendant discusses making a documentary or “mini-doc” about Plaintiff and invites other members of the group to message her directly. (Murrey Decl. Exh. F.)

The allegations of wrongdoing against Defendant Gibbons are similar in character to the allegations made against Defendants Vanessa Valdes and Liv Burger which were the subject of prior anti-SLAPP motions granted by this court on April 8, 2024. The analysis of that ruling is applicable to Defendant here.

From the above, there is ample basis to conclude that Plaintiff’s suit against Valdes arises from protected activity, both through statements made in a public forum concerning an issue of public interest and through conduct in furtherance of the exercise of the constitutional right of free speech in connection with a public issue or an issue of public interest. Valdes’s statements were made in an online Facebook group to what Plaintiff’s FAC characterizes as an audience of “millions.” (FAC ¶ 10.) Similar online postings have been held to involve a “classic public forum.” (Chaker v. Mateo (2012) 209 Cal.App.4th 1138, 1146.)

Plaintiff’s objection that he was not permitted to join the group in question does not obviate the character of public forum. (Opposition at pp. 10–11.) Smaller scale, closed publications have been held to amount to public fora. Statements made in a newsletter of limited circulation to a small neighborhood of homeowners and characterized as “a mouthpiece for a small group of homeowners who generally would not permit contrary viewpoints to be published in the newsletter” has likewise been held to be a public forum. (Damon v. Ocean Hills Journalism Club (2000) 85 Cal.App.4th 468, 476.) A federal court applying this precedent ruled that even a private Facebook group of 14,900 members could constitute a public forum under the anti-SLAPP statute. (Hicks v. Bradford (C.D. Cal., Dec. 13, 2022, No. CV217330DMGGJSX) 2022 WL 20689541, at *4.) Thus the statements at issue here were made in a public forum.

The evidence and pleadings also establish that Valdes’s posts involved a matter of public interest: women’s security against male violence and harassment. Plaintiff’s allegations disclose as much. He states that these and other Facebook groups “allegedly exist to protect women.” (FAC ¶ 59.) In his original Complaint, he found fault with Defendants “postur[ing] about protecting women” in their posts. (Complaint ¶ 30.) He contended that the posters “aggressively promote themselves . . . as champions and protectors of women.” (Complaint ¶ 31.) . . . Although Plaintiff contends that these representations are insincere, this alleged insincerity would not remove the subject of discussion from the public interest. Courts have held comments made on a “Ripoff Report Web site” about a business owner’s “character and business practices,” concerned a public interest under the anti-SLAPP statute. (Chaker, supra, 209 Cal.App.4th at p. 1146.) Valdes’ comments about Plaintiff’s harassing conduct, on a forum directed to warning women against men who engage in such conduct, concerned at least as great a public interest.

(4/9/2024 Ruling.)

Thus the present case against Defendant arises from protected activity within the meaning of the anti-SLAPP statute.

B. LIKELIHOOD OF PREVAILING

After a defendant meets their burden of showing that the gravamen of the complaint involves protected activity, the plaintiff must then “demonstrate that the complaint is both legally sufficient and supported by a sufficient prima facie showing of facts to sustain a favorable judgment if the evidence submitted by the plaintiff is credited.” (Matson v. Dvorak (1995) 40 Cal.App.4th 539, 548.) A defendant can meet its burden if it can establish that the plaintiff cannot overcome an affirmative defense. (Birkner v. Lam (2007) 156 Cal.App.4th 275 at 285.)

“[A] plaintiff cannot simply rely on his or her pleadings, even if verified. Rather, the plaintiff must adduce competent, admissible evidence.” (Grenier v. Taylor (2015) 234 Cal.App.4th 471, 480.)

“Legally sufficient” means that the cause of action would satisfy a demurrer. (Dowling v. Zimmerman (2001) 85 Cal.App.4th 1400, 1421.) The evidentiary showing must be made by competent and admissible evidence. (Morrow v. Los Angeles Unified School District (2007) 149 Cal.App.4th 1424, 1444.) Proof, however, cannot be made by declaration based on information and belief. (Evans v. Unkow (1995) 38 Cal.App.4th 1490, 1497–1498.) The question is whether the plaintiff has presented evidence in opposition to the defendant’s motion that, if believed by the trier of fact, is sufficient to support a judgment in the plaintiff’s favor. (Zamos v. Stroud (2004) 32 Cal.4th 958, 965.)

Defamation “involves (a) a publication that is (b) false, (c) defamatory, and (d) unprivileged, and that (e) has a natural tendency to injure or that causes special damage.” (Price v. Operating Engineers Local Union No. 3 (2011) 195 Cal.App.4th 962, 970.) A false light claim based upon the same facts as a defamation claim “must meet the same requirements.” (Hawran v. Hixson (2012) 209 Cal.App.4th

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